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17 *Interim Co-Lead Counsel for*
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19 *Additional Counsel Listed on Signature Pages*

20 **UNITED STATES DISTRICT COURT**
21 **NORTHERN DISTRICT OF CALIFORNIA**
22 **SAN JOSE DIVISION**

23 IN RE: FUTURE MOTION, INC.

24 No.: 23-md-03087-BLF

25 PRODUCTS LIABILITY LITIGATION

26 **PARTIES' PROPOSED AGENDA FOR**
27 **CASE MANAGEMENT CONFERENCE**
28 **NUMBER 2 (MARCH 7, 2024)**

This document relates to:

ALL ACTIONS

The parties to this MDL proceeding hereby submit the following proposed agenda for the upcoming Case Management Conference to be held by Zoom® before the Court on March 7, 2024 at 1:30 p.m. Pacific time, and would respectfully present to the Court as follows:

1 **I. PIWD Plaintiffs' Leadership Proposal**

2 On February 26, 2024, a proposal for Co-Lead, Liaison, Executive Committee, and Steering
 3 Committee Personal Injury/Wrongful Death (“PIWD”) Plaintiffs’ counsel was submitted to the Court
 4 for consideration. (Doc. 81.) PIWD Plaintiffs’ counsel uniformly intend to establish a balanced
 5 leadership team, which reflects diversity of all types and is composed of individuals capable of steering
 6 this litigation to resolution. PIWD Plaintiffs recognize that their leadership should include attorneys
 7 with demonstrated capacity, skill, reputation, and financial resources to fairly, effectively, and
 8 efficiently lead the MDL. They also recognize the importance for their leadership to reflect a diversity
 9 of legal talent in terms of education, background, experience, and demographics. The proposed
 10 candidates are as follows:

12 **Co-Lead Counsel**

13 Robert Cowan
 14 Rene Rocha

15 **Liaison Counsel**

16 Anya Fuchs

17 **Executive Committee**

18 Cameron Bell
 19 Megan Roper
 20 Lowell McKelvey
 21 Michael Johnson
 22 Eli Hare

23 **Steering Committee**

24 Michael Gallagher
 25 Matthew Felty
 26 Hayden Wyatt
 27 Aaron Heckaman

28 **II. Discovery Update**

29 The PIWD Plaintiffs’ Interim Leadership and Defendant’s counsel reached an agreement with
 30 respect to the content of a Plaintiff’s Fact Sheet (“PFS”) on or before the deadline imposed by
 31 CMO 1, and such PFSs should have been provided to all PIWD Plaintiffs for completion immediately

1 thereafter. All PIWD Plaintiffs with cases then on file or transferred to the MDL should serve a
 2 completed PFS upon defense counsel no later than March 6, 2024 per CMO 1.

3 In addition, Plaintiffs' Interim Co-Lead Counsel notified defense counsel of their Phase I Initial
 4 Disclosure category pursuant to CMO 1 as follows on February 27, 2024:

5 Any insurance agreement under which an insurance business may be liable to satisfy
 6 all or part of a possible judgment in an action made subject to MDL 3087, and/or to
 7 indemnify or reimburse for payments made to satisfy any judgment for personal injury
 8 and/or class action claims made the subject of or related to these MDL 3087
 9 proceedings, including any and all such insurance agreements for the 2014 through
 10 2024 policy periods. The term "insurance agreement" shall mean the entirety of all
 11 primary, excess, and umbrella liability insurance policies, as well as the self-insured
 12 retention limits for the identified policy periods.

13 The foregoing notice triggered Defendant's 30-day response deadline under CMO 1.

14 The PIWD Plaintiffs' counsel have circulated drafts of written discovery for service upon
 15 Defendant, and such counsel anticipate making such service within the next two weeks, if not earlier.

16 **III. Settlement Conference Planning Session with United States Magistrate Judge Beeler**

17 PIWD Plaintiffs' Interim Co-Lead Counsel, Class Counsel, and Defendant's Counsel and other
 18 attorneys attended an approximately one-hour Zoom® conference with United States Magistrate Judge
 19 Beeler on February 15, 2024. The discussion was introductory in nature but also wide-ranging with
 20 regard to options and planning for future involvement by Judge Beeler to assist the parties through in-
 21 person settlement conference(s). Ultimately, Judge Beeler instructed the parties to confer on a timeline
 22 for them to (1) organize the relevant information (i.e., detailed factual information about the Plaintiffs
 23 (e.g., damages, mechanism of injury, etc.) and insurance silos for the Defendant, among other issues);
 24 (2) digest that information (internally, with each other, and with insurance defense and coverage
 25 counsel); (3) formulate proposals for how to structure and approach the settlement conference,
 26 exchange them, and confer about them to identify and address obstacles; and (4) thereafter have an in-
 27 person settlement conference with the Court. Judge Beeler ordered the parties to provide an email
 28 update to the Court on their meet and confer efforts with respect to the timeline for the above no later

1 than April 3, 2024. Class Counsel also discussed with Judge Beeler the timing of a separate settlement
 2 conference to address the class action. Both PIWD Plaintiffs' Counsel and Class Counsel (as well as
 3 Judge Beeler) believe that the in-person settlement conferences for the PIWD Plaintiffs and Class
 4 Plaintiffs should be held separately.
 5

6 **IV. JCCP 5305 Update**

7 In early February 2024, the Chief Justice of California and Chair of the Judicial Council signed
 8 an order permitting the Presiding Judge of the Santa Cruz Superior Court to assign a trial coordination
 9 judge to preside over JCCP 5305. The Honorable Judge Volkmann currently presides over JCCP 5305,
 10 and upon his upcoming retirement in March, the assignment will be transferred to the Honorable Judge
 11 Cogliati.
 12

13 To date, including add-ons, there are approximately 150 actions in JCCP 5305; the majority of
 14 those actions are co-represented by two law firms (Pearce Lewis LLP and Bailey Cowan Heckaman
 15 PLLC). The Court has signed leadership organizational and appointment orders for both sides.
 16 Leadership for the Parties have adopted the same Plaintiff Fact Sheet as agreed to in this MDL and are
 17 imminently close to finalizing stipulated Master Pleadings (including the Master Complaint, Master
 18 Answer, and Short-Form Complaint).
 19

20 With the support of Leadership, the Court recently appointed Mr. John Burton as Special
 21 Master of JCCP 5305. Mr. Burton will assist the litigants to expeditiously resolve discovery disputes
 22 and will also assist and offer opinions with respect to other issues critical to the Parties' shared goal
 23 of achieving efficiency and reducing the burden placed upon the resources of the Court. Leadership
 24 counsel for both sides have individually met with the Special Master.
 25

26 The next status hearing before Judge Volkmann is March 20, 2024. Special Master Burton, as
 27 well as Leadership members for both sides, plan to attend in person and likewise intend to meet with
 28

1 Mr. Burton after the hearing's completion for the purpose of discussing a proposed trial schedule that
2 is reasonably tempered to accommodate the considerable number of actions in the JCCP.

3 **V. Upcoming Events / Action Items**

4

- 5 • On-going: Parties coordinating timely transfer of add-on matters
- 6 • 3/6: Plaintiff Fact Sheets Due for all current MDL Plaintiffs
- 7 • On-going: Parties conferring on approach to settlement conference process
- 8 • On-going: Future Motions' review of Plaintiff Fact Sheets
- 9 • 3/28: Deadline for Future Motion's response to Plaintiffs' Phase I Initial Disclosure Request
- 10 • 4/3: Deadline to update Judge Beeler on joint efforts re: settlement conference process
- 11 • 4/10: Deadline for Parties' list of representative cases
- 12 • TBD: Parties request a fixed deadline for objections to representative case(s) (if necessary)
- 13 • TBD: Parties request a further Status Conference for late April, after the deadline to submit
- 14 objections to representative case(s).

16 Dated: February 29, 2024

17 Respectfully submitted,

18 By: /s/ Robert W. Cowan

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LOCAL RULE 5-1 ATTESTATION

I hereby attest, pursuant to Civil L.R. 5-1(i)(3) that the concurrence to the filing of this document has been obtained from each signatory hereto.

By: /s/ Robert W. Cowan
Robert W. Cowan

CERTIFICATE OF SERVICE

I hereby certify that on February 29, 2024, a true and correct copy of the foregoing document was served via filing it with the Court's CM/ECF system, which served all registered parties.

By: /s/ Robert W. Cowan
Robert W. Cowan